122-639

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 401.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

WILLIAM J. MATHESON AND JAMES A. STEELE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 17, 1884.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William J. Matheson and James A. Steele, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said William H. Robertson, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of the October term, eighteen hundred and eighty-four, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 10th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

ADDISON BROWN.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from three to forty-three, inclusive, contain a true and *true and* complete transcript of the record and proceedings had in said court in the case of William H. Robertson, plaintiff in error, against William J. Matheson and James A. Steele, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsed:) 8365. U. S. Supreme Court. William H. Robertson, plaintiff in error, against William J. Matheson & ano., defendants in error. Writ of error. Elihu Root, attorney for plaintiff in error. Service of a copy of the within writ of error is hereby admitted this 10th day of October, 1884. Hartley & Coleman, attorneys for defendants in error. U. S. circuit court. Filed Oct. 10, 1884. Timothy Griffith, clerk.

3 SUPREME COURT OF THE STATE OF NEW YORK,
City and County of New York:

WILLIAM J. MATHESON AND JAMES A. Steele, plaintiffs,
against
WILLIAM H. ROBERTSON, DEFENDANT.
} Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, January 11, 1883.

HARTLEY & COLEMAN,
Plaintiffs' Attorneys.

Office and post-office address, 62 Wall street, New York City.

4 (Indorsed:) N. Y. supreme court. W. J. Matheson et al., against William H. Robertson. Summons. Hartley & Coleman, pl'ffs' attorneys, 62 Wall street, New York City.

123.

5 The President of the United States of America to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against William H. Robertson, defendant, by William J. Matheson & ano'r, plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 2d day of February, 1883, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 27 day of January, in the year one thousand eight hundred and eighty-three.

[L. S.] JOSEPH M. DEUEL,
Clerk.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

6 (Indorsed:) 8365. U. S. circuit court. W. J. Matheson & ano'r vs. William H. Robertson. Copy certiorari. Elihu Root, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, January 27, 1883. Yours, Stewart L. Woodford, U. S. attorney, attorney for defendant. To Hartley & Coleman, plaintiffs' attorney.

7 Supreme court of the State of New York, city and county of New York.

WILLIAM J. MATHESON AND JAMES A. STEELE plaintiffs, *against* WILLIAM H. ROBERTSON, DEFENDANT. } Complaint.

Plaintiffs complain:

1st. That the defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiffs were, during said times, partners in trade, under the firm name of W. J. Matheson & Company, and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. That plaintiffs in order to obtain said goods were compelled to pay the defendant, as such collector, in excess of the lawful rate of duty on said goods, and of the amount required by law, the sum of fourteen hundred and ninety-five $\frac{20}{100}$ dollars.

4th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the ground of objection thereto.

5th. That plaintiffs made due and timely appeals on each entry to the Secretary of the Treasury, who affirmed the decision of the defendant upon certain of said entries, and as to the rest, neglected for more than ninety days, as well from the dates of said appeals as prior to the commencement of this action, to decide said appeals.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, if rendered; together with the other particulars required by law; and is made a part thereof.

7th. The said sum, so exacted as aforesaid, has never been repaid to plaintiffs, and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for the sum so exacted as aforesaid with interest on the several sums named in the bill of particulars, from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

HARTLEY & COLEMAN,
Attorneys for Plaintiffs.

8 BILL OF PARTICULARS.

Name of importer (for all the importations), W. J. Matheson & Co.

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed and date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
			1882	1882.	1882.		1882.	1882.
Bromo-fluo-esic acid, &c.	Cimbria	Hamburg..	Jan. 31	Feb. 25	Feb. 25	153 50	July 6	Oct. 14
	Donau	Bremen. ..	Feb. 17	Mar. 17	Mar. 17	153 50	May 29	" 14
	Allemania.	Hamburg..	Mar. 16	Ap. 7	Ap. 7	153 50	July 6	None.
	Cimbria....	"	Mar. 22	Ap. 12	Ap. 12	153 50	June 20	Oct. 14
	Lessing...	"	Ap. 27	May 17	May 17	161 20	" 28	" 14
	Frisia	"	May 24	June 10	June 10	144 00	July 6	" 14
	Cimbria. .	"	June 21	July 10	July 10	432 00	" 29	" 14
	"	"	Aug. 2	Aug. 22	Aug. 22	144	Oct. 7	" 14

9 United States circuit court, southern district of New York.

WILLIAM J. MATHESON & ANO'R
versus
W. H. ROBERTSON, COLLECTOR, ETC.

The answer of the defendant herein, by Stewart L. Woodford, his atterney, to the complaint of the plaintiffs in the above-entitled action.

I. He admits that he was, at the times in said complaint mentioned, collector of the port of New York, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned, were paid by said plaintiffs as a debt due by them to the United States, and not otherwise; and were received by defendant by virtue of his office, as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys, so received from plaintiffs, were the amounts due from them to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with the duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiffs' import entry thereof were collected or received by defendant from the plaintiffs.

III. And defendant further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant further answering admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs, conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

10 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

W. H. Robertson, being duly sworn, says that he is the defendant above named, and that the foregoing answer is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

_____ _____.

Sworn to before me this day of 188 .

_____ _____,
Notary Public, New York County.

(Indorsed:) 8365. U. S. circuit court, southern district of New York. W. J. Matheson & ano'r, vs. W. H. Robertson, collector, etc. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. Due service of a copy of the within answer is hereby admitted. New York, 188 . plaintiffs' attorney'. To Hartley & Coleman, plaintiffs' attorney'.

11 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the seventh day of February, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Hoyt H. Wheeler, judge.

WILLIAM J. MATHESON ET AL.
vs.
WILLIAM H. ROBERTSON. } 8365.

Now comes the plaintiffs, by Hartley & Coleman, their attorneys, and move the trial of this cause. Likewise comes the defendant, by his attorney, Elihu Root, U. S. attorney. Thereupon a jury is empaneled and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, on Friday, February 8, 1884, the jury retire, and on their return render a verdict whereby they find for the plaintiffs.

Counsel consent, in open court, that the amount of said verdict is to be adjusted at the custom-house.

12 The court orders that a certificate of probable cause be *en*entered herein, and that the defendant have a stay of proceedings on said verdict for ninety days.

13 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the second day of October, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Wm. J. Wallace, circuit judge.

WILLIAM J. MATHESON ET AL.
vs.
WILLIAM H. ROBERTSON. } 8365.

(On margin:) Form assented to. W. W. A.

This cause having been brought to trial and a verdict therein having been rendered for the plaintiffs, the amount subject to adjustment at the custom-house, under the direction of the court, now, therefore, it appearing from a report of the New York custom-house that there is due the plaintiffs under the principles of said verdict on the following import entries of merchandise as follows, viz:

Per Cimbria,	No. 26058,	paid	Feb.	25,	1882	.....	$153 25
" Donau,	" 34696,	"	Mar.	17,	"	.....	153 25
" Allemania,	" 45719,	"	April	17,	"	.....	153 25
" Cimbria,	" 48551,	"	"	12,	"	.....	153 25
" Lessing,	" 64859,	"	May	17,	"	.....	161
" Frisia,	" 76008,	"	June	10,	"	.....	143 80
Per Cimbria,	No. 88158,	paid	July	10,	1882	.....	431 05
14 " do.	" 109451,	"	Aug.	22,	"	.....	140 85
							$1,489 70

Now, on motion of Hartley & Coleman, plaintiffs' attorneys, the U. S. attorney for defendant appearing, ordered that judgment be entered for the sum of fourteen hundred and eighty-nine dollars and seventy cents, principal, with interest on each of the several sums above named from the date of payment thereof as above expressed to the date of entry of judgment, and for the costs and disbursements herein to be taxed, and that a certificate of probable cause be also inserted in said judgment.

WM. J. WALLACE,
Judge.

(Endorsed:) 8365. U. S. circuit court, southern district of N. Y. W. J. Matheson et al. vs. W. H. Robertson. Judgment order. U. S. circuit court. Filed Oct. 2, 1884. Timothy Griffith, clerk. Hartley & Coleman, pl'ffs' att'ys, 62 Wall st., N. Y. City.

15 U. S. circuit court, southern district of New York.

WILLIAM J. MATHESON & AL.
vs.
WILLIAM H. ROBERTSON. } No. 8365.

Judgment.

The issues in this action having been brought on for trial before the honorable Hoyt H. Wheeler, judge, and a jury, at a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the U. S. court-rooms, in the city of New York, on the third Monday of October, 1883, and the issues having been tried, and a verdict for the plaintiffs having been duly rendered by said jury on the 8th day of February, 1884, for a sum to be computed at the New York custom-house; and said computation having been made and confirmed by order of the court, whereby it appears that the principal sum due under said verdict is fourteen hundred and eighty-nine dollars
16 and seventy cents ($1,489.70), with interest to be computed, and said interest having been computed and adjusted in the sum of two hundred and ten $\frac{55}{100}$ dollars, and plaintiffs' costs and disbursements having been taken and adjusted in the sum of fifty-two dollars and eighty-five cents ($52.85): Now, on motion of Hartley & Coleman, plaintiffs' attorneys, it is adjudged that said plaintiffs recover of said defendant the sum of fourteen hundred and eighty-nine dollars and seventy cents ($1,489.70), the amount so found by the jury, with two hundred and ten $\frac{5}{100}$ dollars, being interest thereon, together with fifty-two dollars and eighty-five cents ($52.85) costs and disbursements, amounting in the whole to the sum of seventeen hundred and fifty-three $\frac{10}{100}$ dollars. And it is hereby certified under the statute in such case made and provided that the defendant
17 had probable cause in making the exaction of the plaintiffs heretofore complained of.

Judgment signed this 9th day of October, 1884.

JOHN A. SHIELDS,
Deputy Cl'k.

(Endorsed:) 8365. U. S. circuit court, southern dist. of N. Y. W. J. Matheson & al. vs. W. H. Robertson. Judgment record. U. S. circuit court. Filed October 9, 1884, 2 p. m. Timothy Griffith, clerk.

18 United States circuit court, southern district of New York.

WILLIAM J. MATHESON ET AL.
vs.
WILLIAM H. ROBERTSON, AS COLLECTOR OF the port of New York. } 8365.

Be it remembered that this action came on for trial before the Hon. Hoyt H. Wheeler, district judge, and a jury, at a stated term of this court held at the city of New York, in said district, the 7th day of February, 1884, whereupon the following, among other things, occurred, viz, the plaintiffs, to maintain the issues on their part, showed that in the year

1882, at the times and by the vessels mentioned in their bill of particulars, they imported and entered at the port of New York the merchandise therein, mentioned, to wit, certain bromo-fluoresic acid; that all of said importations were described in the consular invoices thereof delivered
19 to defendant, collector, at the time of and accompanying the entry as bromo-fluoresic acid, and all except that by the Frisia, June 10th, 1882, were entered by the plaintiffs as aniline dyes, in compliance with what the plaintiffs understood from their custom-house broker to be the custom-house practice and requirements in order to get possession of their goods, and that the latter importation was entered as bromo-fluoresic acid; and that all of said importations were by the defendant classified for duty as aniline dyes, at the rate of fifty cents per pound and thirty-five per centum ad valorem, and that the plaintiffs paid said duties under protests in writing, signed by them and addressed to the said collector of customs, in which they stated that they protested against the collector's decision as to the rate and amount of duties to be paid on brumo-fluoresic acid, entered by them for consumption at certain specified dates, which were the dates mentioned in the bill of particulars, "because it is an acid used" for chemical or manufacturing purposes, free of duty as
20 "per the free list of the tariff;" and that they paid the excess of duty under compulsion, solely to get the goods.

Evidence was given on behalf of the plaintiffs that acids are frequently and extensively used in the production of, and as, dyes and colors, and among others, including picric and nitro-picric acids, nitric acid, muriatic, acetic, tartaric, sulphuric, arsenious, and oxalic acids, specifically named in the tariff under the denomination of acids dutiable or free.

There was no contradiction of this evidence.

Evidence was also given on behalf of the plaintiffs that bromo-fluoresic acid is an acid used for chemical and manufacturing purposes, and it was conceded by the defendant's counsel that he had no evidence tending to show that this article is not an acid used for chemical and manufacturing purposes.

Evidence was given on behalf of the plaintiffs that bromo-fluoresic acid is not an aniline dye, and contained no aniline; that it was not a derivative, or product, direct or remote, of aniline; that the commer-
21 cial designation of the goods in dispute in the trade and commerce of the United States was bromo-fluorescic acid, or B. F. acid, so far as it has been dealt in and acquires a name commercially; the plaintiff stated in evidence that, so far as he knew, he was the only importer of this article, except one other firm which had imported it for the same consumer for whom the plaintiff imported it.

That after importation it was manufactured into various coloring materials or pigments for wall papers, being chemically combined with various bases thus forming new chemical compounds or salts.

Evidence was also given by dealers in aniline dyes and colors generally that bromo-fluoresic acid was not commercially known as aniline dye or color, nor was it bought or sold in the markets of this country under that designation; various other articles, however, do exist and are bought and sold here as aniline dyes and colors and under such general commercial designation with subordinate specific names.

22 As to the relations existing between "eosine" and "bromo-fluoresic acid," the following testimony was given, on behalf of the plaintiffs, by professor Henry Morton, president of the Stevens Institute of Technology, in Hoboken, N. J., an expert chemist, especially in aniline dyes and kindred subjects.

I am acquainted with the commercial article known as eosine.

Q. Will you state whether there are differences between the eosine of commerce and this article, the bromo-fluoresic acid?

A. This article, in the first place, as I understand it, cannot properly be described as a dye-stuff. It is not fit for commercial use as a dye-stuff. It has dyeing properties, so that a chemist in his laboratory, in testing it, can dye a fragment of silk or wool with it sufficiently to assure himself that it gives a certain color, which is one of the tests to recognize and distinguish that substance from some other. But for use for commercial purposes as a dye it is unfit, chiefly on account of its lack of solubility in water. It has very little solubility in water, and therefore could
23 not be conveniently and practically applied as a dye-stuff.

Q. It would require, then, further manipulation, or, rather, it would have to become a new body by the action of some other chemical substance before it would become a dye-stuff?

A. It would have to become a new body in the sense that it would have to combine with something else in order to be practically used as an efficient dye-stuff.

Q. What is the particular use, as far as you know, of bromo-fluoresic acid?

A. It is used as a raw material in the manufacture of colors. By raw material I mean a material which is used in a business or manufacture.

Q. The base of an industry?

A. The base of a business or manufacture—the base of an industry.

Q. As such it is the same, is it not, as aniline in the aniline industry, or carboline acid in the manufacture of phenol colors?

A. It is.

Q. I asked you a question some time ago that a juror says was not answered as fully as he desired in regard to the differences between
24 "b. f. acid" and "eosine," the difference between b. f. acid and aniline colors?

A. I didn't understand that there was a question precisely like that mentioning aniline colors before, but I will explain so as to make the thing clear. In the first place, as I understand it, and as the matter of fact, neither this acid nor the commercial substance known as eosine have any relation whatever to the aniline or aniline colors as matter of fact. They are neither of them made out of aniline or related to aniline; don't belong to the same class as aniline as chemical bodies, and have no relation whatever.

The commercial substance, eosine, has, in a commercial sense, possibly, though not to my personal knowledge, but it may be that in a commercial sense that substance has been regarded an aniline color, because it was dealt in by the people who imported aniline colors and the like, but that is a simple accident, as I understand it, and does not make it an aniline color.

25 There is a substance which, as I have said, has nothing in any way whatever as a matter of fact to do with aniline, but has certain commercial properties which connect it in that sense. This body, this acid, has never so been used in commerce as to get into that bad company and so get that name. Therefore we are left in regard to it purely on the merits of what it is as a matter of fact. It is a body which, when combined with soda or potash, forms the commercial eosine. When we combine this bromo-fluoresic acid with soda or potash we can manufacture the substance which has got the name of eosine in commerce.

Q. Now, this when combined with soda forms an entirely new chemical?

A. It is a new chemical compound.

Q. And is not either soda nor is it bromo-fluoresic acid?

A. Precisely as glauber salt—sulphate of soda being a compound of oil of vitriol—is neither oil of vitriol or organic soda. It is a com-
26 pound, and the result of combining those two is that you have neither of the organic substance' from which they are derived.

A chemical union is a combination by which new properties are derived, and the material becomes a radical new substance.

On his cross-examination he was asked:

Q. If eosine be an aniline dye, why is not bromo-fluoresic acid an aniline dye?

(Objected to unless it is confined to the trade.)

A. Because the only sense in which eosine is an aniline dye is that it has been called so by those who have dealt in it; and, as the other has not been so called by those who deal in it, the reason for calling it so does not exist.

Q. Simply because they have taken care not to put it down as an aniline dye in the price-lists?

A. Simply because it has not been so called, the calling being the reason and there being no calling there is no reason.

Q. That is, there is no substantial difference between the sub-
27 stances which would prevent bromo-fluoresic acid from being classed as an aniline dye if eosine be so classed?

A. Substantial difference would have nothing to do with such a classification—in other words, if indigo had been called an aniline dye color it would be an aniline color by that definition; therefore substantial difference has nothing to do with it.

Between eosine and bromo-fluoresic acid there is the substantial difference that one is in such a shape that the ordinary dyer, with his ordinary knowledge and ways of working, can take the thing and use it, whereas the other calls upon him to know the chemistry of the subject and to make a chemical treatment of the body and then use it afterwards.

Q. That is if it comes to him to be used?

A. Yes. One of the distinctions is that an ordinary dyer receiving eosine would know its use; if he received bromo-fluoresic acid he would not know, he would send it back and say "send me something that is good; I don't know what to do with this stuff."

28 Q. Well, here is a new article; nobody knows what it is; now we have got to class it somewhere or other?

A. I should class it as an acid; something for the manufacture of a dye-stuff.

Upon cross-examination of one of plaintiffs' witnesses defendant's counsel asked the following question: "Do you know of any other anilines besides eosine that are used for making pigments—colors?" Which question was objected to by plaintiffs' counsel as immaterial. The defendant's counsel, stating that the object of the question was to show that the article in suit, though an acid used for chemical and manufacturing purposes, bore a similitude in its uses to the uses of aniline dyes, and hence was dutiable as such under the similitude clause of the tariff, section 2499 U. S. Rev. Stats. The court sustained the objection, and excluded the question, saying:

The COURT. My present impression is that we should not go to
29 the similitude clause for the purpose of finding a place for this article. It is enumerated either in one way or the other; it is either enumerated as an acid or as a dye; and if it is an acid, the plaintiff is right, and if it is not an acid, but a dye, the defendant is right. That is my present impression about it. We will exclude this last question.

DEFENDANT'S COUNSEL. Your honor will give me an exception?

The COURT. Yes, sir. I exclude this on the ground that it is not open to open the similitude clause for the purpose of showing that this article should be assessed as an aniline dye by similitude or resemblance to aniline dye; but confine the question to the distinction between aniline dyes, as commercially known, and acid.

DEFENDANT'S COUNSEL. The difficulty about the thing is this, that it is an article dealt in by one person, according to the evidence. It
30 don't have any commercial meaning or any commercial understanding, and we have got to class it the best way we can under the circumstances.

The COURT. I don't exclude you from showing anything you can about this article. But you go to eosine, a thing not named in the statute.

DEFENDANT'S COUNSEL. How am I going to show about this without going to something else to make a standard?

The COURT. You compare this with eosine, so far as eosine is an aniline dye. But you are going to the use of it, as I understood you, for the purpose of showing that this article is in similitude, in the use to which it is applied to an aniline dye. That is the way I understood you.

DEFENDANT'S COUNSEL. I put it this way: I should ask your honor to charge the jury that if they find that this is substantially the same thing as any of the aniline dyes (I wish to put forward several of them), that then they must find for the defendant. I shall ask your
31 honor to give that instruction, and in order to ask that instruction, I must go to these different ones.

The COURT. I do not exclude description of aniline dyes.

DEFENDANT'S COUNSEL. Then it is the drift of my question that applies to the use of aniline dyes? I suppose that the use might be one characteristic of the class. The very term aniline dye or color implies that.

The COURT. That is a statutory similitude, the use to which it is to be applied, without reference to its quality, but with reference to its use. I exclude that because I don't think we can go to the similitude clause to

determine the question raised on this protest, as I understand it. I do not shut out any comparison of this article; as to aniline dyes, you can show what aniline dyes are; you can show what this is; you can show what goes under the name of aniline dye; I shall not exclude that.

32 DEFENDANT'S COUNSEL. I take an exception to your honor's ruling excluding the question.

The plaintiffs having rested, the defendant moved for the direction of a verdict as follows:

DEFENDANT'S COUNSEL. If the court please, I move the direction of a verdict for the defendant on the case upon the ground that there is no evidence showing an illegal exaction with reference to the cause of action upon the importations by the Cimbria, July 10, 1882.

The COURT. You mean that your motion is confined to that one?

DEFENDANT'S COUNSEL. I shall propose to make a further motion later on; I propose to make a specific motion as to each importation clear through.

The COURT. You claim that this is an aniline dye?

DEFENDANT'S COUNSEL. I claim that it is an aniline dye, and I admit that it is an acid used for manufacturing purposes. I cannot deny that.

33 Now, on the papers as presented in this case, can your honor say that there is no aniline dye that is an acid, that it cannot be an aniline dye and also be an acid at the same time? These papers before the collector say it is both.

The COURT. As I understand it, there are a great many aniline dyes that are not acids.

DEFENDANT'S COUNSEL. Yes, sir; and a great many that have acid properties.

The COURT. We will take any evidence that the defendant has to show that this is not an acid, or anything that tends to show that it is not what the plaintiffs' evidence tends to show that it is.

DEFENDANT'S COUNSEL. I think we have evidence tending to show that it is an aniline dye, if that is competent under your honor's view.

The COURT. I am not prepared to say whether that would show that it was an acid or not; I would rather hear the proof.

DEFENDANT'S COUNSEL. I will state we have no evidence tending to show that this article is not an acid used in chemical and manufacturing purposes. If your honor can dispose of it on that statement it can

34 be disposed of now. If your honor will allow us to go into the question of whether it is an aniline dye or not, we have evidence on that subject.

The COURT. For the purpose of saving your question exactly as it ought to be I will rule that the court will admit any evidence tending to show that this is not an acid within the description of the free list, any evidence that you may have to show that.

DEFENDANT'S COUNSEL. I ask the court to direct a verdict for the defendant on each importation mentioned in the bill of particulars, and I except to your honor's refusal to direct a verdict for the defendant. I except separately to each one of them, and I move generally for a verdict for the defendant upon the ground that there is no evidence of an illegal exaction of duties.

The COURT. I overrule that.

DEFENDANT'S COUNSEL. I take an exception to that.

To the court's refusal to direct a verdict, as requested, and to the court's said ruling the defendant then and there duly excepted, and he so
35 excepted to said refusal and ruling separately as to each importation mentioned in the bill of particulars.

The defendant then introduced the evidence of dyers and dealers in dy'ing materials and in aniline dyes and colors generally, who testified that they were acquainted with eosine, but were not acquainted with bromo-fluoresic acid, and that eosine was an aniline dye, commercially.

ISAAC W. DRUMMOND, being duly sworn and examined as a witness for the defendant, testifies:

By DEFENDANT'S COUNSEL:

Q. What is your business?

A. Chemist; manufacturing chemist and manufacturer of painters' pigments and colors.

Q. What is the name of your firm?

A. F. W. De Voe & Co.

Q. Their place of business is where?

A. On Fulton street, corner of William.

Q. Are you acquainted with bromo-fluoresic acid?

A. Chemically, I am acquainted with it; not practically; we don't use it in our business.

Q. Do you use eosine?

36 A. Tetrabrom-fluorescinate of soda, chemically known as eosine.

Q. What is its relation to bromo-fluoresic acid?

A. Bromo-fluoresic acid is the acid of eosine; eosine is composed of an acid and a base; the base is soda, and the acid is tetrabrom-fluoresic acid.

Q. In making colors what is the function of those two elements?

A. All the dyeing, tinting, and coloring property inherent in eosine is in the tetrabrom-fluorescine; the sodium has nothing to do with the tinting or coloring property of it; the sodium is added to the tetrabrom-fluoresic acid in order to make it more soluble in water, so as to be of more value to use in that form than it would be as tetrabrom-fluoresic acid. It could be used as tetrabrom-fluoresic acid, but it is not as desirable, as it is made into a salt called the tetrabrom-fluorescinate of sodium.

Q. Because it is not so soluble?

A. Because it is so soluble. There is just as much coloring property in the tetrabrom-fluoresic acid before the soda is added to it as there
37 is afterwards. We use the tetrabrom-fluorescinate of soda in making artificial vermillion; that is what eosine is for.

Q. Give us the process.

A. We take as a base for this color what is called dry red lead; we might use just as well alumina or white lead, but we take red lead, because the red takes a certain amount of red to begin with, and we don't have to waste eosine; very good. Then we take our eosine and dissolve it in hot water, and precipitate it on our red lead with nitrate of lead; that decomposes the tetrabrom-fluorescinate of soda into nitrate of soda and tetrabrom-fluorescinate of lead. So you see that we don't use the soda in our resulting product at all. It forms nitrate of soda, which is washed away, nearly all, in our color-making; all that remains is the red lead with

the tetrabromo-fluorescinate of lead precipitated on to it. We have no use for the soda at all, except to make it rather more soluble in water than tetrabrom-fluoresic acid is. Tetrabrom-fluoresic acid can be dissolved in water to a slight extent, but it is not practicable to do it.

38 It may be dissolved in water, and nitrate of lead is added to the tetrabrom-fluorescinate of soda; then comes the precipitate of lead in the tetrabrom-fluorescinate of soda, and in using the eosine itself, but that would use a very large quantity of water itself, and therefore it is not very much done. But the inherent property, the coloring matter, of the eosine is in the tetrabrom-fluorescine, and the soda has nothing to do with it further than to make it more soluble in water; it enhances its solubility.

Q. Having the union with sodium, and having dissolved the stuff in water then you put the lead with the water?

A. Yes, sir.

Q. Do you understand that in the trade, practically or commercially, bromo-fluoresic acid or eosine are used except for their chemical properties to make dyes or colors?

A. That is all.

Q. It is not used for any other purpose?

A. Not that I know of.

Q. For what purposes is arsenious acid used; do you know that?

A. Yes, sir; it is used in the trade for making Paris green; it is

39 used to make an arsenite of copper, which is Paris green.

By PLAINTIFFS' COUNSEL:

Q. It is arsenic, isn't it?

A. Arsenious acid is practically what is known in the trade as arsenic; if a man buys arsenic he buys arsenious acid in the trade.

By DEFENDANT'S COUNSEL:

Q. What is Paris green used for?

A. Paris green is used for killing potato-bugs as a rule.

By PLAINTIFFS' COUNSEL:

Q. It is a paint, too, isn't it?

A. Oh, yes; it is a paint.

By DEFENDANT'S COUNSEL:

Q. What is bora'ic acid used for?

A. Bora'ic acid, I couldn't say; it isn't used in our trade. Outside of our trade I wouldn't like to say what it might be used for.

Q. Eosine is known in the trade as an aniline dye?

A. Yes, sir.

Q. Is bromo-fluoresic acid a dye?

(Objected to on the ground that witness is not shown to have knowledge.)

A. Yes, sir; it is a dye.

By PLAINTIFFS' COUNSEL:

40 Q. Do you mean that it is used as a dye, or that it will dye?

A. He asked me if it was a dye and I said it was a dye.

Q. Is it used as a dye in the trade, to your knowledge, in this country?

A. No, sir; not to my knowledge.
Q. Has your firm ever dealt in it?
A. No, sir.
Q. Have you ever used it in making the articles which you have spoken of?
A. No, sir.
Q. You never bought or sold it?
A. We never bought or sold tetrabrom-fluoresic acid; we have bought and sold eosine; we import it direct ourselves.
Q. You spoke about the soda that is united with the bromo-fluoresic acid as being of no use except as a vehicle to carry the color; now suppose you were to use as the base of a precipitate nitrate of lead, would that produce the same shade of color that another base, like sodium, would?
A. I don't understand your question.
Q. Suppose this B. F. acid were precipitated with nitrate of lead,
41 would it produce the same shade or color that it would produce if it was united with sodium?
A. Yes, sir.
Q. Exactly the same?
A. So far as I am able to judge, it would.
Q. Have you ever made the experiment?
A. No, sir; from my general chemical knowledge; I never made the experiment practically.
Q. Did you ever make any experiment with bromo-fluoresic acid at all?
A. No, sir.

After the evidence on both sides was closed the defendant requested the court to direct a verdict in favor of the defendant on the whole case. The court declined to direct a verdict for the defendant, to which refusal the defendant then and there duly excepted.

The court thereupon submitted the case to the jury and charged as follows:

"If this article is an acid used for manufacturing purposes return a verdict for plaintiff. If it is not, return a verdict for the defendant."

The defendant thereupon, and before the jury retired, duly ex-
42 cepted to the first clause of said charge and to the second clause of said charge and to each of them separately.

Afterwards the jury found a verdict in favor of the plaintiffs.

And because none of the matters aforesaid appear by the record of this cause, the said judge hereby signs and allows this bill of exceptions as of the 7th day of February, 1884, and with the same force and effect as if the same had been presented to the said judge and had by him been signed, sealed, and allowed before the jury had retired to determine on their verdict.

Witness my hand this 6th day of August, A. D. 1884.

HOYT H. WHEELER.

43 (Endorsed:) 8365. U. S. circuit court, southern district of New York. William J. Matheson et al. versus William H. Robertson. Bill of exceptions. Elihu Root, United States attorney, attorney

for defendant. Due service of a copy of the within is hereby admitted. New York, July 29, 1884. Hartley & Coleman, attorney for plaintiff. We consent to the form of the within bill of exceptions. Aug. 1, 1884. Hartley & Coleman, p'l'ffs att'ys. Elihu Root, U. S. att'y, att'y
44 for def't. U. S. circuit court. Filed Aug. 9, 1884. Timothy Griffith, clerk.

45 Supreme Court of the United States-

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
against
WILLIAM H. MATHESON AND JAMES A. STEELE, defendants in error.

Afterwards, to wit, on the third Monday of the October term of eighteen hundred and eighty-four, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error, by Elihu Root, his attorney and says that in the records and proceedings aforesaid there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he,
46 the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

ELIHU ROOT,
Attorney for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. William H. Robertson, plaintiff in error, against William S. Matheson and James A. Steele, defendants in error. Assignment of error. Elihu Root, United States attorney, attorney for plaintiff in error. Due service of a copy of the within is hereby admitted. New York, October 10th, 1884. Hartley & Coleman, attorneys for defts. in error. To Mess. Hartley & Coleman, attorneys for defendants in error. U. S. circuit court. Filed Oct. 10, 1884. Timothy Griffith, clerk.

47 Supreme Court of the United States.

WILLIAM H. ROBERTSON, P'F IN ERROR,
vs.
WILLIAM J. MATHESON AND JAMES A. STEELE, def'ts in error.

And afterwards, to wit, on the third Monday of the October term of eighteen hundred and eighty-four, the said defendants, by their attorneys, Edward Hartley and Walter H. Coleman, come freely here into court and say that there is no error, either in the record and proceedings afore-

said or in giving the judgment aforesaid, and they pray that the court now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given, may in all things affirmed, &c.

EDWARD HARTLEY,
WALTER H. COLEMAN,
Attorneys for Defendants in Error.

Due service hereof admitted Oct. 10, 1884.

ELIHU ROOT,
Atty. for Plff. in Error.

48 (Endorsed:) Supreme Court of the United States. William H. Robertson, plaintiff in error, *vs.* William J. Matheson and James A. Steele, def'ts in error. Joinder in error. U. S. circuit court. Filed Oct. 10, 1884. Timothy Griffith, clerk.

49 UNITED STATES OF AMERICA, *ss:*

To William J. Matheson & James A. Steele, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of the October term, eighteen hundred and eighty-four, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson, plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, October 10th, 1884.

ADDISON BROWN.

50 (Indorsed:) 8365. U. S. Supreme Court. William H. Robertson, plaintiff in error, against William J. Matheson & ano., defendants in error. Citation. Elihu Root, attorney for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 10 day of October, 1884. Hartley & Coleman, attorneys for defendants in error. U. S. circuit court. Filed Oct. 10, 1884. Timothy Griffith, clerk.

(Indorsement on cover:) No. 401. William H. Robertson, collector of the port of New York, plaintiff in error, v. William J. Matherson and James A. Steele. S. New York, C. C. U. S. Filed 17th October, 1884.

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